

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707970

RICKY A. GASKINS, EMPLOYEE	CLAIMANT
JEFF MINNER TRUCKING, EMPLOYER	RESPONDENT
GREAT AMERICAN INS. CO. OF NY, CARRIER	RESPONDENT

**OPINION FILED SEPTEMBER 4, 2009**

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE JEREMY M. THOMAS, Attorney at Law, Blytheville, Arkansas.

Respondent represented by HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the Administrative Law Judge filed February 25, 2009.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 6, 2007, the relationship of employee-employer-carrier existed among the parties, when the claimant earned

wages sufficient to entitle his to weekly compensation benefits at the rate of \$504.00/\$378.00, for temporary total/permanent partial disability.

3. On July 6, 2007, the claimant did not sustained [sic] injuries arising out of and in the course of his employment with respondents.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

---

A. WATSON BELL, Chairman

---

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant was performing employment services when the injury occurred. The Arkansas Court of Appeals set out the standard for determining when a claimant is performing employment services in Wal Mart Stores Inc. v. Sands, 80 Ark. App. 51, 91 S.W. 3d 93 (2002):

The test is whether the injury occurred within the time and space boundaries of the employment, when the employee [was]

carrying out the employer's purpose or advancing the employer's interest directly or indirectly.

It should be noted that the claimant is an over the road truck driver and as such is considered a traveling employee. As a traveling employee, the time and space boundaries of the employment are continuous. Also, as the "premises" of the employment travels with the traveling employee, the "going and coming" rule, which is discussed in Lytle v. Arkansas Trucking Services, 54 Ark. App. 73, 923 S.W. 2d 292 (1996), does not apply. See 1 Larson, Workers' Compensation Desk Edition §25 Traveling Employees and §13 Going To And From Work.

The majority, by affirming and adopting the Administrative Law Judge, cites the Lytle case as the basis for denying this claim. However, the Lytle case is distinguishable. In Lytle, the injury occurred while the claimant was in the act of driving the truck on a personal errand. Driving a truck on a personal errand, without other facts known, is not performing employment services. However, in the instant claim, the injury did not occur while the claimant was driving the truck on a personal errand. The

claimant had stopped driving and was in the act of putting out a fire on the respondent's truck when the truck tire exploded, causing the claimant's grievous injuries.

P.A.M. Transportation v. Miller, 24 Ark. App. 163, 750 S.W.2d 417 (1988) is more applicable to this case than Lytle. Miller takes into account the traveling employee doctrine, and states:

...when the employee abandons the deviation and returns to the performance of his duties, he regains his status as a traveling employee. Appellee, at the time of his injury, was returning to his rig with the intention of driving it to appellant P.A.M. headquarters in Tontitown. Clearly there is substantial evidence that appellee, whatever his earlier deviation might have been, was at that moment acting within the course and scope of his employment.

Here, the relevant inquiry is not what the claimant was doing before he got out of the truck and attempted to put out the fire. What matters is what the claimant was doing at the time of injury. Attempting to put out the fire on the respondent's truck directly advances the employer's interest, and is performing employment services.

For the aforementioned reasons I must respectfully dissent.

Gaskins - F707970

-6-

---

PHILIP A. HOOD, Commissioner